IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2892 OF 2006

Rajkumar G. Shirshad (Jain) ....Petitioner

V/s.

Subhash G. Shirshad (Jain) ....Respondent

Mr.Surel S. Shah for the Petitioner.

Mr.M.R. Deshpande for the Respondent.

CORAM : R.M. SAVANT, J.
DATED : 7TH JUNE, 2007.

P.C. :

1. This Petition filed under Article 227 of the Constitution of India impugns the order dated 14.3.2006 passed by the learned 3rd Joint Civil Judge (J.D.), Solapur. By the said order the Petitioner's application numbered as Exhibit 44 for setting aside (no written statement) order, came to be rejected.

2. The said rejection was on the ground that despite the service of summons upon the Petitioner herein, the written statement was not filed within the time stipulated in order VIII Rule 1 of the C.P.C. and no proper justification why the written statement could not be filed within the stipulated time has been

given.

3. The Petitioner has in the present Petition cited the reasons as to why the written statement could not be filed. In my view the reasons ought to have been cited before the trial Court. The learned counsel appearing on behalf of the Petitioner submits that liberty may therefore be granted to the Petitioner to make a fresh application setting out the reasons as to why the written statement could not be filed within the stipulated time. The Petitioner is therefore granted liberty to make a fresh application for setting aside no written statement order dated 14.3.2006. The learned counsel for the Petitioner further states the the said application will be made within two weeks from date. If such an application is made, the same would be disposed of by the trial Court on its own merits and in accordance with law within one month thereafter. The Respondent would be entitled to oppose the said application on such grounds available to him. The interest of justice would also be served if the Petitioner who is the original Defendant is directed to pay costs of Rs.5000/- to the Respondent. The said costs to be paid within two weeks from date. The application to be taken up for hearing only after the Petitioner

produces evidence of having paid the said costs.

4. In the light of the above, the learned counsel for the Petitioner craves leave to withdraw the above Petition. The Petition is dismissed as withdrawn.

(R.M. SAVANT, J.)